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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,263	12/15/2003	Markus Baumann	RD7750USDIV	5792

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LEGAL PATENT RECORDS CENTER
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WILMINGTON, DE 19805

EXAMINER	
JUSKA, CHERYL ANN	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/737,263	BAUMANN ET AL.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-9 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 15 December 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 12/03.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The claim to prior application 10/038,035 cited in the first line of the specification needs to be updated with the patent number and issue date of said application.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Europe on 07/08/1999. It is noted, however, that applicant has not filed a certified copy of the EP 99 113 269.7 application in the present application or the parent application, 10/038,035, as required by 35 U.S.C. 119(b).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 7, and 9 of copending

Application No. 2004/0123399. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the product in the product by process claims of the copending application is the same as the scope of the present product claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 1-9 are indefinite because it is unclear if the claimed textile article is actually dyed. Note that the claims recite the nylon yarns are only "dyeable" not that said yarns are dyed. If said yarns are not actually dyed, it is unclear how the claimed stain resistance can be obtained.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,387,448 issued to Collier et al.

Applicant claims an article having a textile surface formed from at least two types of dyeable nylon yarns. The first type of nylon yarn is dyeable by an acid (or anionic) dyestuff and the second type is dyeable by a cationic (or basic) dyestuff. The textile surface is coated with a stainblocker composition such that said surface has a specified stain resistance. Said article is preferably a pile structure formed of the first and second types of yarn and the stainblocker is coated on the entire height of the pile yarns. Said stainblocker is preferably an anionic functionalized type, such as a sulphonated phenol formaldehyde condensate type, maleic acid anhydride type, acrylate dispersions, and mixtures thereof. In another embodiment, the stainblocker composition is a sulphone resole type having nonionic functionality. The nylon yarns may be bulked continuous filaments (BCF) or staple spun yarns. The pile elements each may be formed from both types of nylon yarns or some pile elements may be formed of the first nylon, while some others may be formed of the second nylon.

Collier discloses a bleach resistant composition that may comprise (a) an anionically modified phenol formaldehyde polymer, a naphthalene condensate, a lignin sulfonate, a phenol sulfonate derivative, or a (meth)acrylic polymer and (b) a polyester (abstract). Collier teaches that anionically modified phenol formaldehyde polymer, naphthalene condensates, lignin sulfonates, and phenol sulfonate derivatives provide stainblocking properties to nylon fibers (col. 1, lines 35-43 and col. 2, lines 36-20). Working Example 6 tests the inventive bleach resistant composition on various carpet styles that a representative of those found in the marketplace (col.

14, lines 60-62). The Results Table at col. 15, line 25, shows at least three carpet samples having blends of cationic and acid dyeable nylon yarns. Said carpet samples have stain resistance rating according to AATCC Test Method 175 with FD&C Red 40 (i.e., KOOL-AID) of 9-10. Thus, claims 1-4 are anticipated by the cited Collier reference.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-5 are rejected under 35 USC 103(a) as being unpatentable over US 4,043,749 issued to Huffman and/or US 5,131,918 issued to Kelley in view of US 5,681,620 issued to Elgarhy.

Huffman and Kelley both teach carpets comprising acid dyeable nylon yarns and cationic (basic) dyeable nylon yarns that are cross-dyed with both an acid dye and a basic dye, thereby obtaining an aesthetically pleasing multi-colored carpet. See Kelley, abstract, col. 1, lines 39-58, col. 2, lines 18-24 and 28-47, and col. 9, lines 2-4 and 16-18 and Huffman, abstract, col. 1, lines 43-48, col. 1, line 60-col. 1, line 2, and col. 3, line 51-col. 4, line 6.

Huffman and Kelley fail to teach the addition of a stainblocker to the nylon carpet. However, the use of stainblockers on nylon carpets are well known in the art, in particular on acid dyeable nylon carpets. For example, Elgarhy teaches treating nylon 6 or nylon 6,6 (i.e., acid dyeable nylon) carpets with a stainblocker of a sulfonated aromatic-aldehyde condensation

product, such as a sulfonated resole resin (abstract, col. 3, lines 19-36, col. 4, lines 4-7, and claims 1, 3, and 5).

Thus, it would have been obvious to one skilled in the art to employ a stainblocker on the carpets of Huffman and/or Kelley in order to prevent staining of the acid dyeable nylon yarns. Although the basic dyeable nylon yarns are inherently stain resistant to acid stains, the acid dyeable nylon yarns would still require a stainblocker as is common in the art of commercial carpets. Hence, one would treat the entire carpet with said stainblocker rather than attempting to dye and treat only the acid dyeable yarns before forming the carpet.

With respect to the recited stain resistance properties, it is asserted that the carpets of Huffman and/or Kelley when modified according to the Elgarhy reference would have said properties. Specifically, chemically and structurally alike products cannot have mutually exclusive properties. Therefore, claims 1-5 are rejected as being obvious over the cited prior art.

12. Claims 6-9 are rejected under 35 USC 103(a) as being unpatentable over the cited Collier reference.

Claims 6-9 are rejected under 35 USC 103(a) as being unpatentable over the cited Huffman and/or Kelley reference in view of the cited Elgarhy reference.

Although Collier, Huffman, Kelley, and Elgarhy do not explicitly teach the features of claims 6-9, it is argued that said features are obvious over the cited reference. Specifically, applicant is hereby given Official Notice that BCF and staple spun yarns are commonly employed in the carpet art. As such, it would have been readily obvious to one skilled in the art to employ either a BCF or staple fiber yarn structure for the pile yarns of the prior art carpets. Motivation to do so would be the conventionality of said yarns and the commercial success

associated with said yarns. Therefore, claims 6 and 7 are rejected as being obvious over the the cited references.

Regarding claims 8 and 9, it would have been readily obvious to blend the two nylon types together or to separate the nylon types in different pile elements in order to produce a variety of color effects due to the differential dyeing characteristics of the two types of nylon yarns. Therefore, claims 8 and 9 are also rejected over the cited prior art.

Conclusion

13. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj
September 1, 2005